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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-962

TENNESSEE GAS PIPELINE COMPANY,
a Division of Tenneco Inc.,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioner, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), hereby supplements its Petition for a Writ of Certiorari to bring to the Court's attention the attached decision of the United States Court of Appeals for the Fifth Circuit in *Trunkline Gas Company* v. *Federal Energy Regulatory Commission* issued December 17, 1979. Adhering to its earlier decision in *United Gas Pipe Line Company* v. *FERC,* 597 F.2d 581 (5th Cir. 1979), the Fifth Circuit reversed Commission orders which, as in the case at bar, had excluded from Trunkline's rate base advance payments made by Trunkline pursuant to Order No. 465. It is noteworthy that the Commission had requested the Fifth Circuit to remand the Commission orders for further consideration in light of the

decision of the District of Columbia Circuit in the case at bar (Commission Trunkline Brief, p. 14). The Fifth Circuit's *Trunkline* decision serves to further amplify the conflict among circuits on the matter here involved and to demonstrate the continuing importance of the issue that needs to be resolved.

Respectfully submitted,

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January 4, 1980

APPENDIX

TRUNKLINE GAS COMPANY,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION, Respondent.

No. 79-1364.

United States Court of Appeals,
Fifth Circuit.

Dec. 17, 1979.

Review was sought of orders of the Federal Energy Regulatory Commission and its predecessor. The Court of Appeals held that: (1) pipeline company was entitled to include in rate base certain advance payments made to group of natural gas producers for the commitment of new natural gas reserves, and (2) orders would not be remanded so that Commission could reconsider the issue of advance payments where the legal issue had recently been decided in favor of another pipeline company and no reason was advanced for disparity of treatment.

Reversed.

1. Courts ⇐90(2)

Panel of the Court of Appeals must follow decisions of prior panels.

2. Gas ⇐14.5(9)

Where legal issue of entitlement of pipeline company to include certain payments in rate base had recently been decided in favor of another pipeline company and second pipeline company was in the same position as first pipeline company, and where the Federal Energy Regulatory Commission advanced no reasons for disparity of treatment in the two cases, orders would not be remanded so that treatment of the payments could be reconsidered by the Commission.

3. Gas ⇐14.4(8)

Pipeline company was entitled to include in rate base certain advance payments made to group of natural gas producers for the commitment of new natural gas reserves.

Petition For Review of An Order of The Federal Energy Regulatory Commission.

Before CHARLES CLARK, RONEY and GARZA, Circuit Judges.

PER CURIAM:

This case involves the review of two unreported orders issued by the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission, in *Trunkline Gas Company*, Docket Nos. RP72-23 *et al.* and RP73-35: the June 3, 1977 "Order Reversing Initial Decision" and the December 18, 1978 "Order Denying Rehearing."

By those orders, the Commission excluded from rate base certain advance payments made by Trunkline to a group of natural gas producers headed by Sun Oil Company and to Natural Gas Pipeline Company of America for the commitment of new natural gas reserves, unless specified conditions were met.

On review, the Commission concedes that the legal issue has been resolved in favor of Trunkline's position by *United Gas Pipe Line Co. v. FERC*, 597 F.2d 581 (5th Cir. 1979). This Court there held, *inter alia*, that advance payments such

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as the ones here under consideration made by a natural gas pipeline under FPC Order 465, 48 FPC 1550 (1972), could not be excluded from the pipeline's rate base. This case presents the same issue concerning Order 465 advances as did the *United* case.

The Commission requests us to remand the Commission's orders in this case so that its treatment of the Order 465 advance payments at issue can be reconsidered. We deny the request. That precise suggestion was made to this Court in the *United* case on a petition for rehearing.

[1-3] In fact, the Commission's position here is argued in its brief by a long quotation from the petition for rehearing filed in the *United* case. That position was rejected by a denial of the petition for rehearing in *United* on August 8, 1979. 597 F.2d 581. So must it be here for three reasons. First, a panel of this Court must follow the decisions of prior panels, so the *United* decision controls this case. *Puckett v. Commissioner*, 522 F.2d 1385 (5th Cir. 1975). Second, Trunkline Gas Company, being in the same position as United Gas Pipe Line Company, would seem to be entitled to the same treatment by this Court. Third, the Commission advances no reason for disparity in treatment of the two cases.

The petition for review is granted, the orders of the Commission are reversed, and the Commission is instructed to accord to Trunkline the rate base treatment mandated by our decision in *United*.

After this case was scheduled for oral argument, the Commission filed a motion to waive oral argument. Trunkline opposed the motion. Deciding that the dispositive issue had been "recently authoritatively decided," F.R.A.P. 34(a)(1), we granted the motion and decided the case on briefs without oral argument. 5th Cir. R. 18.

REVERSED.

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